

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CASEY CUNNINGHAM, et al.,

Plaintiffs,

v.

CORNELL UNIVERSITY, et al.

Defendants.

No. 1:16-CV-06525-PKC

**[PROPOSED] ORDER REGARDING FORM OF CLASS NOTICE**

WHEREAS, the Court ordered Class Counsel to submit a proposed order regarding a class notice program in its order granting class certification under Federal Rule of Civil Procedure 23(a) and (b)(1) on January 22, 2019 (Doc. 219); and

WHEREAS, Federal Rule of Civil Procedure 23(c) does not require any particular form of notice for a class certified under section (b)(1); and

WHEREAS, the Corrected Amended Complaint (Doc. 81) seeks damages under 29 U.S.C. §1132(a)(2), which allows a participant to bring an action under 29 U.S.C. §1109 for losses to a defined contribution plan for breaches of fiduciary duty, and only seeks to recover losses to the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax-Deferred Annuity Plan as a whole;

WHEREAS, Courts typically do not require prejudgment notice in participant class actions under 29 U.S.C. §1132(a).

It is hereby ORDERED that:

(1) If the parties, at any time, file a motion for preliminary approval of a class-wide settlement, then the motion shall be accompanied by a proposed notice and terms for a notice program compliant with Rule 23, the Class Action Fairness Act, and any other applicable law; and

(2) If the Court enters judgment for the plaintiff class, then the Class Counsel will, within 45 days thereafter, file a proposed notice and terms for a notice program compliant with Rule 23, the Class Action Fairness Act, and any other applicable law.

Dated: February 21, 2019

So ORDERED,



Hon. P. Kevin Castel  
District Court Judge  
United States District Court for the Southern  
District of New York

PKC